



LEWIS BRISBOIS BISGAARD & SMITH LLP

Jennifer R. Harris
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New York, New York 10005
Jennifer.Harris@lewisbrisbois.com
Direct: 646.783.0916

January 28, 2020

File No. 31165.344

VIA ECF

Magistrate Roanne L. Mann
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Anthony Daversa v. Cowan Equipment Leasing, LLC and Michael Vanwagoner*
Venue : US Dist. Court, Eastern Dist. of NY
Index No. : 20-CV-0163
Our File No. : 31165.344

Dear Judge Mann:

Please allow the following to serve as defendants' objection to the Court's Report and Recommendation remanding this action to Supreme Court Queens County for lack of jurisdiction.

Enclosed please find executed affidavits from the following thirteen (13) members of Cowan Equipment Leasing, LLC establishing that none of its members are residents of the State of New York and thus there is complete diversity of citizenship between the defendants and plaintiff (New York).

1. Joseph Cowan - Maryland resident
2. Kelly Colhoun - Maryland resident
3. Joanna Evans - Maryland resident
4. Dennis Morgan - Maryland resident
5. Richard Warner - Maryland resident
6. Dan Evans - Maryland resident
7. Herman Funk Jr.- Maryland resident
8. James Mechlinski - Maryland resident
9. Richard Cichon - Pennsylvania resident
10. Dan Colhoun - Maryland resident
11. Brett Turner - Pennsylvania resident
12. Steven Wells - Maryland resident
13. Thomas Alford - Maryland Resident

Furthermore, with regard to the Amount in Controversy, during a telephone discussion with plaintiff's counsel, Jay D. Umans, Esq., Mr. Umans advised that he would not cap his damages at \$75,000. Therefore, plaintiff is seeking in excess of \$75,000 in damages.

Where the pleadings themselves are inconclusive as to the amount in controversy, "federal courts may look outside those pleadings to other evidence in the record." *United Food & Commercial Workers Union, Local 919 v. Centermark Properties Meriden Square*, 30 F.3d 298 (2d Cir. 1994). "[A] district court may allow a plaintiff to 'clarify' his or her complaint after removal in order to assist the court in evaluating the jurisdictional facts existing at the time of removal, if the complaint was ambiguous or silent as to the precise amount in controversy." *In re Fosamax Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 24717 (S.D.N.Y. 2013). See, e.g., *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 223 (3d Cir. 1999) ("Although a court can make an independent appraisal of the reasonable value of the claim . . . it might also consider a stipulation as clarifying rather than amending an original pleading.") (internal citations and quotations omitted); *Asociacion Nacional de Pescadores a Pequena Escala o Artesanales de Colombia (ANPAC) v. Dow Quimica de Colombia S.A.*, 988 F.2d 559, 565 (5th Cir. 1993) ("Although . . . a plaintiff may not defeat removal by subsequently changing his damage request, because post-removal events cannot deprive a court of jurisdiction once it has attached, in this case the affidavits clarify a petition that previously left the jurisdictional question ambiguous. Under those circumstances, the court is still examining the jurisdictional facts as of the time the case is removed, but the court is considering information submitted after removal.") (emphasis in original) (citing *St. Paul Mercury*, 303 U.S. at 292). *In re Fosamax*, supra, at 98-99.

Based on the foregoing, defendants have established that the requirements for diversity jurisdiction have been met and respectfully request that this case remain in the United States District Court, Eastern District of New York.

Thank you for Your Honor's attention to this matter.

Very truly yours,

Jennifer R. Harris of
LEWIS BRISBOIS BISGAARD & SMITH LLP

(via ECF)
Jay D. Umans, Esq.
Attorney for Plaintiff
377 Oak Street, Suite 101
Garden City, New York 11530
(516) 542-0200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

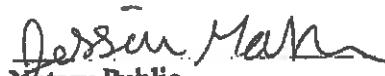
I, Joseph Cowan, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

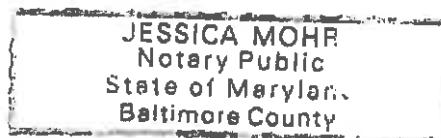
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 10711 Greenspring Ave., Lutherville, MD 21093.

SIGNED UNDER THE PENALTIES OF PERJURY


JOSEPH COWAN

Sworn to before me this
29 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

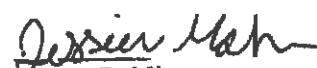
I, Richard Cichon, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the Commonwealth of Pennsylvania and have maintained, and continue to maintain the following residence in the Commonwealth of Pennsylvania: 1725 Foxwood Drive, Jamison, PA 18929.

SIGNED UNDER THE PENALTIES OF PERJURY


RICHARD CICHON

Sworn to before me this
28 day of January, 2020


Notary Public

JESSICA MOHR
Notary Public
State of Maryland
Baltimore County

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiff,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

AFFIDAVIT

Defendants-Petitioners.

----- X
I, Herman Funk Jr., am over the age of eighteen and understand the obligations of an oath. Being
duly sworn, I hereby state the following:

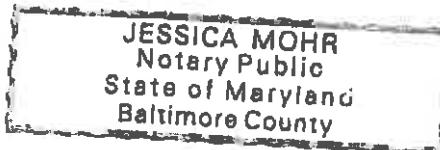
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 4505 Hemlock Cone Way, Ellicot City, MD 21024.

SIGNED UNDER THE PENALTIES OF PERJURY

H E Funk
HERMAN FUNK JR.

Sworn to before me this
28 day of January, 2020

Jessica Mohr
Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

AFFIDAVIT

Defendants-Petitioners.

I, Joanna Evans, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

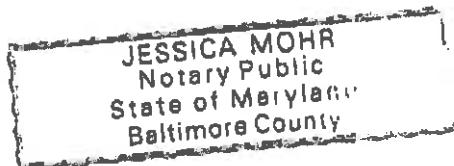
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 10806 Greenspring Ave., Lutherville, MD 21093.

SIGNED UNDER THE PENALTIES OF PERJURY


JOANNA EVANS

Sworn to before me this
28 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

AFFIDAVIT

Defendants-Petitioners.

----- X

I, Dan Evans, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

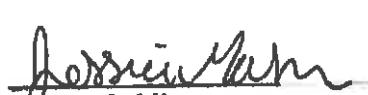
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2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 10806 Greenspring Ave., Lutherville, MD 21093.

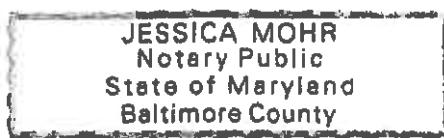
SIGNED UNDER THE PENALTIES OF PERJURY



DAN EVANS

Sworn to before me this
28 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
I, Kelly Colhoun, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

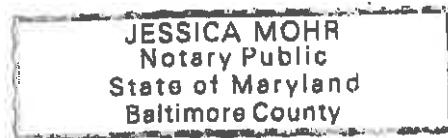
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 10801 Greenspring Ave., Lutherville, MD 21093.

SIGNED UNDER THE PENALTIES OF PERJURY

Kelly C. Colhoun
KELLY COLHOUN

Sworn to before me this
23 day of January, 2020

Jessica Mohr
Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

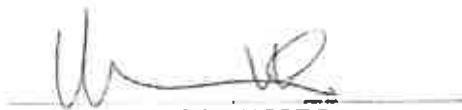
Defendants-Petitioners.

----- X
AFFIDAVIT

I, Dan Colhoun, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

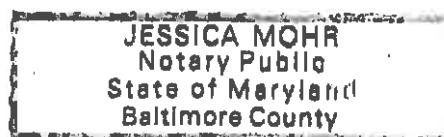
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 10801 Greenspring Ave., Lutherville, MD 21093.

SIGNED UNDER THE PENALTIES OF PERJURY


DAN COLHOUN

Sworn to before me this
28 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

I, Dennis Morgan, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

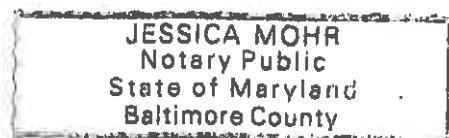
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 11839 Gontrum Road, Kingsville, MD 21087.

SIGNED UNDER THE PENALTIES OF PERJURY


DENNIS MORGAN

Sworn to before me this
20 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

I, James Mechlinski, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 328 Gusray Street, Baltimore, MD 21224.

SIGNED UNDER THE PENALTIES OF PERJURY


JAMES MECHLINSKI

Sworn to before me this
20 day of January, 2020


Notary Public

JESSICA MOHR
Notary Public
State of Maryland
Baltimore County

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

I, Steven Wells, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 1608 Rushing Stream Court, Forest Hill, MD 21050.

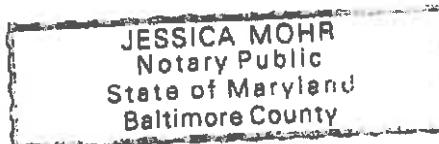
SIGNED UNDER THE PENALTIES OF PERJURY



STEVEN WELLS

Sworn to before me this
28 day of January, 2020

Jessica Mohr
Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

----- X
AFFIDAVIT

I, Brett Turner, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

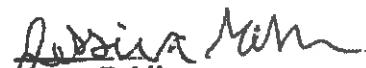
1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the Commonwealth of Pennsylvania and have maintained, and continue to maintain the following residence in the Commonwealth of Pennsylvania: 710 Harriton Rd., Bryn Mawr, PA 19010.

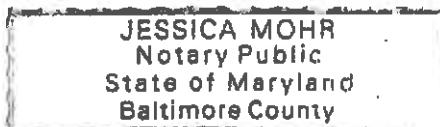
SIGNED UNDER THE PENALTIES OF PERJURY



BRETT TURNER

Sworn to before me this
20 day of January, 2020


Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING, LLC and
MICHAEL VANWAGONER

Defendants-Petitioners.

-----x
AFFIDAVIT

I, Richard Warner, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

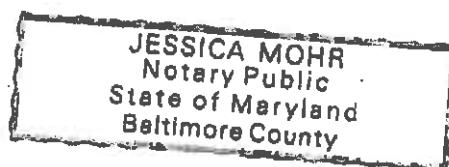
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2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 810 Chester River Dr., Grasonville, MD 21638.

SIGNED UNDER THE PENALTIES OF PERJURY

Richard F. Warner
RICHARD WARNER

Sworn to before me this
28 day of January, 2020

Jessica Mohr
Notary Public



4815-2410-8722.1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY DAVERSA,

Civil Action No.: 1:20-cv-
00163-WFK-RLM

Plaintiffs,

-against-

COWAN EQUIPMENT LEASING; LLC and
MICHAEL VANWAGONER

AFFIDAVIT

Defendants-Petitioners.

----- X
I, Thomas Alford, am over the age of eighteen and understand the obligations of an oath. Being duly sworn, I hereby state the following:

1. Cowan Equipment Leasing, LLC was and still is a limited liability company formed in the State of Maryland.
2. I have been and remain a member of Cowan Asset Management, LLC and Cowan Asset Management II, LLC. These Maryland companies are the only two members of Cowan Equipment Leasing, LLC.
3. I am a citizen of the State of Maryland and have maintained, and continue to maintain the following residence in the State of Maryland: 6415 Fernbank Ave., Baltimore, MD 21214.

SIGNED UNDER THE PENALTIES OF PERJURY


THOMAS ALFORD

Sworn to before me this
29 day of January, 2020


Notary Public

